

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL MORRIS,

Petitioner,

v.

Case No. 2:09-CV-0287

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge King

MICHAEL SHEETS, Warden,

Respondent.

OPINION AND ORDER

On September 20, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. *Report and Recommendation*, Doc. No. 12. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation* and requests a certificate of appealability. *Objection*, Doc. No. 13. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action hereby is **DISMISSED**. Petitioner's request for a certificate of appealability is **GRANTED**.

Petitioner asserts that the trial court's imposition of more than minimum consecutive prison terms after the Ohio State Supreme Court's decision in *State v. Foster*, 109 Ohio St.3d 1 (2006)(excising fact finding provisions of Ohio's sentencing statutes as unconstitutional under *Blakely v. Washington*, 542 U.S. 296 (2004)), violated petitioner's rights under the due process and the Ex Post Facto Clauses. The Magistrate Judge recommended dismissal of these claims on the merits. In his objections to that recommendation, petitioner raises the same arguments that he previously presented.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. For the reasons

detailed in the Magistrate Judge's *Report and Recommendation*, the Court is not persuaded by petitioner's arguments. His objections are therefore **OVERRULED**.

Petitioner also seeks a certificate of appealability. When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, 529 U.S. 473, 484. To make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Barefoot*, 463 U.S. , at 893, and n. 4....

Id. Upon review of the record, the Court is persuaded that reasonable jurists could debate whether petitioner's §2254 petition should have been resolved differently. Therefore, petitioner's request for a certificate of appealability is **GRANTED**.

The following issue is certified for appeal:

Did the trial court's imposition of more than minimum consecutive terms of incarceration violate petitioner's rights under the due process or the Ex Post Facto Clauses?

IT IS SO ORDERED.

10-14-2010

DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE